

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELECTRONICALLY FILED

----- X
ENERGY BRANDS INC. d/b/a GLACÉAU, :
 :
 Plaintiff, :
 : 08 Civ. 4909 (JSR)
 v. :
 :
 NATIONAL BEVERAGE CORP., :
 :
 Defendant. :
 :
----- X

DEFENDANT'S MOTION TO DISMISS, STAY OR TRANSFER

Defendant National Beverage Corp., by and through undersigned counsel, hereby submits its Motion to Dismiss, Stay, or Transfer this action. Defendant moves this Court to dismiss this action or, in the alternative, stay this action pending resolution of *National Beverage Corp. v. Energy Brands, Inc. d/b/a Glaceau*, Case No. 08-cv-60792, S.D. Fla., or transfer this action to the Southern District of Florida. The Memorandum of Law in Support of Defendant's Motion to Dismiss, Stay or Transfer, and the Declaration of Vickie L. Hilden in Support of Defendant's Motion to Dismiss, Stay or Transfer, are being filed simultaneously herewith.

Dated: Miami, Florida
August 7, 2008

Respectfully submitted,

LOTT & FRIEDLAND, P.A.

By: s/ Leslie J. Lott
Leslie J. Lott
New York Bar No. 1633130
355 Alhambra Circle, Suite 1100
Coral Gables, Florida 33114
Tel: (305) 448-7089
Fax: (305) 446-6191
Email: ljlott@lfiplaw.com
Attorneys for Defendant,
National Beverage Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the referenced date, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the following Service List in the Manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Leslie J. Lott

Leslie J. Lott

David H. Bernstein
Debevoise & Plimpton LLP
919 Third Avenue, 31st Floor
New York, New York 10022

*Attorneys for Plaintiff Energy
Brands, Inc. d/b/a Glaceau*

Service via CM/ECF